

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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In the Matter of)

Inquiry into Policies and Programs to)
Assure Universal Telephone Service in)
a Competitive Market Environment)

RM-8388

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.**

The National Cable Television Association, Inc. ("NCTA"), by its attorneys, submits the following comments in support of the "Petition of MFS Communications Company, Inc. for a Notice of Inquiry and En Banc Hearing" ("MFS Petition").

NCTA is the principal trade association of the cable television industry. Its members provide cable television services to more than 90 percent of the nation's 57 million cable television subscribers. NCTA's members are actively exploring the delivery of telecommunications services as an adjunct to their primary business of providing cable television services to residential subscribers.

Anticipating the development of an increasingly competitive telecommunications marketplace, MFS asks the Commission to begin a proceeding to comprehensively examine universal service issues. NCTA supports the Petition as a timely effort to focus attention on one of the critical aspects of a comprehensive policy response to the coming changes in the telecommunication industry. In the following comments, we set forth our reasons for endorsing a comprehensive examination of universal service issues.

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I. THE COMMISSION MUST ENSURE THAT UNIVERSAL SERVICE REMAINS AVAILABLE IN A COMPETITIVE LOCAL TELECOMMUNICATIONS MARKETPLACE

With the advent of local telecommunications competition comes the requirement to establish regulatory structures that accommodate this new marketplace reality. Just as the Commission adopted the Expanded Network Facilities Interconnection Arrangement ("ENFIA") tariffs, the access charge scheme and separations changes more than a decade ago to ensure that long distance competitors contribute equitably to the costs of interstate access, the Commission must now deal with local competition issues. The MFS Petition provides a useful vehicle for addressing universal service, a vital component of any comprehensive scheme. The Commission should use the Petition to begin a process that will ultimately yield rules designed to maintain universal service without frustrating the continued development of a competitive local telecommunications marketplace.

The cable industry fully recognizes that basic telephone service is an essential service, and that subsidies will likely be necessary to ensure that it remains affordable to low income and rural subscribers. In an age in which connection to electronic networks is increasingly essential to economic and social well-being, no citizen should be deprived of connectivity solely for financial reasons or because of his or her geographic location. In a competitive marketplace, cable companies and others who become providers of telecommunications services have a corresponding responsibility to contribute to the maintenance of universal service. The cable industry understands and accepts this responsibility.

At the same time, we disagree with those who argue that competition and universal service are somehow inconsistent policy goals. Under the longstanding monopoly-based model for the delivery of local exchange service, millions of households remain without telephone service. The growth of local competition will promote universal service by driving down prices and affording consumers greater choice among providers. In

recognition of these long term benefits, any universal service scheme must include transitional procedures that foster competition.

The MFS Petition offers an opportunity to resolve the false conflict between local competition and universal service. It is a starting point for beginning the hard tasks of defining universal service, identifying the goals that require subsidization and the costs of meeting those goals, and establishing an equitable means of apportioning those costs. Such a process is not advanced by attempting to replicate the "subsidies" allegedly embedded in established carriers' current pricing structure, by subsidizing those who could otherwise afford service, or by positing an unrealistically broad definition of universal service whose costs would overburden providers of telecommunications services and their customers. The public interest would not be served if the level of subsidies were set so high that, like an excessive tax, they discouraged all but the established carriers from participating in the telecommunications marketplace and thereby delayed competition and infrastructure modernization.

II. THE COMMISSION MUST ESTABLISH MECHANISMS FOR DEFINING UNIVERSAL SERVICE AND DETERMINING THE APPROPRIATE LEVEL OF SUBSIDIES

The reevaluation of universal service in a competitive local telecommunications environment requires a three-step process. "Universal service" needs to be defined so that policymakers and industry can move toward a common goal. A mechanism should be established so that the elements of universal service can evolve over time without the costs of universal service overwhelming service providers or their customers. Second, the level of required subsidies should be determined through a "bottom up" analysis that identifies which individuals or groups require subsidization and in what amount. Third, universal service responsibilities should be imposed in a competitively neutral fashion that does not favor any particular service provider or class of providers.

The states, with their historic responsibility for ensuring the availability of affordable local telephone service, should be given a significant role in designing the universal service framework. Through the establishment of a Joint Board, for instance, they would help define universal service and establish the funding mechanism to ensure its availability.

A. THE GOAL OF UNIVERSAL SERVICE SHOULD BE UNIVERSAL ACCESS TO THE PUBLIC SWITCHED TELEPHONE NETWORK

In the coming years, the national information infrastructure will offer consumers a broad array of service choices. Just as national health insurance will not include a private hospital room for everyone, however, it is simply not practical or affordable to subsidize the availability of broadband or enhanced services. Rather, the immediate goal of a universal service program should be to provide basic access to the public switched network to every citizen who wants it. Access to the network is the lifeline through which individuals and families can reach essential services and remain part of the social fabric. Such access is also the basic building block upon which all other communications services will be based. By subsidizing this basic connection where necessary, moreover, a universal service program can open the door to more advanced services.

Yet as a nation we have not achieved the goal of universal basic telephone service. Notwithstanding aggregate statistics that show approximately 94% of all households with telephone service -- and despite the billions of dollars of explicit and alleged implicit subsidies -- the goal of basic connectivity has not been met for our poorest citizens. Less than 70% of families receiving food stamps have telephones; in households with four or more food stamp recipients, one-third do not have telephones.¹ Among the elderly

¹ Schement, Anderson, and Peters, "Beyond Universal Service: Characteristics of Americans Without Telephone Service" (paper delivered at Benton Foundation/Columbia University symposium on Universal Service: New Challenges and New Options in Tomorrow's Electronic Environment, Washington, D.C., Oct. 15, 1993), at 3.

receiving Supplemental Security Income ("SSI"), telephone penetration is around 80%.² Telephone penetration levels among white households is eight to ten percentage points higher than among African American and Latino households in all categories of household size.³ In communities outside of metropolitan statistical areas, penetration is also below the national average.⁴ Until every household has basic connectivity -- a dial tone, touchtone capability, and access to baseline emergency services -- it is premature to talk about expanding the concept of universal service to incorporate advanced functionalities.

Even if this fundamental goal is realized, it is unnecessary and unwise to attempt to define in advance which services or functionalities should be included within "universal" service and thus offered to eligible citizens on a subsidized basis. As noted above, an expansive definition of universal service would have the counterproductive effect of burdening would-be providers with costs that will discourage their investment in advanced telecommunications facilities and services. While the nature of the services that should be subsidized may evolve over time -- as the concept of what constitutes "basic connectivity" evolves -- it would be more appropriate to establish a process for periodically reviewing the definition of universal service to determine whether any changes are required. Such a review could be conducted by a Federal-State Joint Board with industry and consumer input, subject to established guidelines for ascertaining whether a particular service or functionality has become essential to basic network access. Guidelines could include, for instance, whether a particular service has become widely but not "universally" dispersed throughout the public switched network through the

² Id.

³ Id. at 4-5

⁴ Id. at 5.

operation of market forces; whether that service is deemed necessary to ensure that all citizens have access to a minimal level of connectivity to the network; and whether existing subscribers would benefit from subsidizing access to the service for new users.

B. TO DETERMINE THE APPROPRIATE LEVEL OF SUBSIDY, THE COMMISSION MUST REEXAMINE THE REASONS THAT PEOPLE DECLINE TELEPHONE SERVICE

Having determined what universal service is, the Commission, with the assistance of the states, should then determine the amount of targeted subsidies necessary to bring that level of service to households that cannot afford it. As a means of determining that amount, it is singularly unproductive to engage in a debate over the current level of "subsidies" embedded in the pricing practices of established carriers. Various studies pegging those subsidies at amounts anywhere from zero to \$20 billion,⁵ the latter figure contained in a paper released earlier this year by the United States Telephone Association ("USTA"). But the effort to ensure universal service should not be used to sanction the current level of internal subsidies -- some government-authorized, other not -- that are endemic to today's telephone pricing. To do so would impose massive costs on competitors that would impede their entry into the marketplace, a result that would directly benefit the established carriers without advancing the goal of universal service.

It may be that in the process of using business revenues to subsidize local services, urban revenues to support rural service, and access and toll revenues to backstop local service, these subsidies play some role in furthering the goal of universal service. But it is most likely that the vast proportion of the subsidies claimed by USTA, while serving a variety of business purposes, are not needed to support universal service and serve only to reward the inefficiencies inherent in a non-competitive market. Significantly, the

⁵ See MFS Petition at 12-16.

telephone industry has thus far failed to prove that competition would result in any meaningful loss of subsidy to basic telephone service.⁶

Rather than simply preserve the status quo, it would be more fruitful to ascertain the amount of externally generated funds required to maintain (or increase) subscribership as internal subsidies are eliminated. Part of this "bottom up" approach would be an effort to determine with greater specificity which individuals or groups require subsidization and in what amounts. In order to ensure that the subsidy program does not become a "permanent and massive drain on the resources of new entrants in order to assure continued prosperity of incumbents,"⁷ the scope of the subsidy must be limited to those satisfying explicitly identified criteria. The criteria may relate to income level, number of persons in a household, age, physical capacity or some other indicia. Until the criteria are established, however, there is considerable risk that subsidies will flow to undeserving customers.

Historically, universal service has also included maintaining affordable telephone service in rural areas. Service in rural areas has been underwritten by subsidies funded by interexchange carriers, and this must remain a high priority. The cable industry supports the continuation of efforts to ensure that citizens in rural areas have access to affordable basic service through the use of appropriately targeted subsidies.

III. ALL TELECOMMUNICATIONS PROVIDERS SHOULD PARTICIPATE IN THE UNIVERSAL SERVICE PROGRAM

The cable industry agrees with MFS that, in a competitive environment, all providers of telecommunications services should contribute equitably to the cost of

⁶ See Expanded Interconnection with Local Telephone Company Facilities (Report and Order and Notice of Proposed Rulemaking), 7 FCC Rcd. 7369, 7436-39 (1992); Expanded Interconnection with Local Telephone Company Facilities (Second Report and Order and Third Notice of Proposed Rulemaking), 8 FCC Rcd. 7374, 7421 (1993).

⁷ MFS Petition at 13-14.

universal service. It would be fundamentally unfair, for instance, for local service competitors to enjoy the right of market entry without bearing appropriate universal service responsibilities. Conversely, it would be equally unjust for the incumbent telephone companies to continue to reap the regulatory benefits of monopoly status once competitors accept those responsibilities. As MFS has noted, "it is crucial that the financial responsibility for subsidies be spread as broadly and as equitably as possible."⁸ All of the participants in the telecommunications infrastructure should be expected to contribute.

Given such a broad base of contributors, the Commission must develop an equitable and competitively neutral scheme for allocating the relative shares of universal service responsibility borne by each market participant. Without competitive neutrality, competitors and their customers will be burdened with excessive universal service obligations. For instance, a provider's relative share of total traffic or revenues would seem to offer a competitively neutral benchmark for assessing the provider's share of the universal service contribution.

While all providers should contribute to a universal service fund, a requirement that all providers actually offer service on a universal basis will frustrate the growth of competition by imposing a threshold burden upon new entrants that they could not possibly meet. Even today's ubiquitous local exchange carriers did not offer "universal" service when they began operation, and taxpayer-supported subsidies were ultimately required to bring service to remote areas that the larger carriers avoided.

Of course, all providers that are willing to deliver universal service should have access to the subsidy fund to which they contribute. The total amount of subsidy made available to any such provider could be based upon the number of eligible subscribers it

⁸ MFS Petition at 18-19.

serves. With equal access to the subsidy fund, providers may compete to deliver universal service at lower prices, thereby reducing the required subsidy.

IV. THE FUND SHOULD BE ADMINISTERED BY AN ENTITY THAT INCLUDES ALL AFFECTED INDUSTRIES OR BY NON-INDUSTRY EXPERTS

Like the funding mechanism, administration of the fund must be accomplished in a competitively neutral manner. If the fund administrator exhibits bias, whether overtly or through a consistent tilting of discretionary decisions in favor of particular carriers, less favored carriers will be forced to contribute without gaining their due rights. It is imperative that the chosen administration scheme not skew the competitive process.

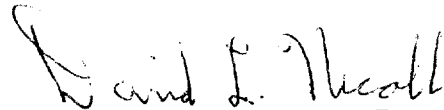
Participation by all contributing carriers in the governance of the fund, with significant minority veto rights to protect new entrants, will go a long way toward achieving competitive neutrality in administration. An industry group operating pursuant to Commission guidelines, such as an expanded National Exchange Carrier Association ("NECA") in which all providers participated, could perform this role. In the alternative, a non-industry expert organization, such as an accounting firm, also operating under FCC guidelines and in concert with an industry advisory group, might effectively administer the fund.

CONCLUSION

The cable industry applauds MFS' initiative in bringing the issue of universal service to the forefront. We look forward to working with the Commission, the states, MFS and other interested parties to translate the principles of universal service into a practical reality.

Respectfully submitted,

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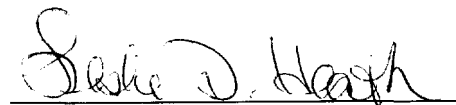
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December 16, 1993

CERTIFICATE OF SERVICE

I, Leslie D. Heath, hereby certify that copies of the foregoing "Comments" were served this 16th day of December, 1993, by first-class postage prepaid mail to the following:

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